

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT TACOMA

JAMES O'NEIL WIGGIN,

Plaintiff,

v.

WILLIAM ROLLINS, R. BEDNACZYK,  
RICHARD ENDERS, BO GUESCHEL,  
MARK BEITER, MARY KEPPLER,  
ROBERTA KANIVE, TIM PANEK,  
YELENA BROKHIS, SHERYL  
ALBERT, FRANK LONGANO, KELLY  
REMY, MARTHA NEWLON, FRED  
NAVARRO, J. DAVID KENNEDY,  
STEVE HAMMOND, LONIE  
FIGUEROA, JOHN DOMINOSKI,  
RANDALL PIERCE, SARAH SMITH,  
DEAN KAO, FLO FADELE, JOHN DOE  
NOS. 1-2,

Defendants.

CASE NO. C13-5057 BHS/KLS

ORDER GRANTING MOTION TO  
AMEND AND DENYING MOTIONS  
FOR TELEPHONIC CONFERENCE  
AND TO DISMISS

Plaintiff has filed several motions: (1) motion to file an amended complaint (ECF No. 62 and 62-1), (2) motion to dismiss three defendants who are no longer named in Plaintiff's proposed amended complaint (ECF No. 69); (3) motion for telephonic conference (ECF No. 64) and a motion for expedited hearing on motion for telephonic conference (ECF No. 66); and (4) motion to accept complaint and to serve 19 new defendants (ECF No. 72).

## DISCUSSION

### A. Motions Relating to Amendment of Complaint (ECF Nos. 62, 69, and 72)

Plaintiff filed a proposed amended complaint (ECF No. 62-1), adding nineteen new defendants and removing three defendants. The allegations contained in the proposed complaint relate to Plaintiff's sinus condition, which gave rise to the allegations in his original complaint. Defendants do not oppose the amendment. ECF No. 63.

The Clerk shall docket Plaintiff's proposed amended complaint (ECF No. 62-1) as Plaintiff's Amended Complaint. The docket reflects that about one-half of the defendants named in Plaintiff's Amended Complaint have been served and are represented by the Attorney General's Office. *See* ECF Nos. 18 and 49. Plaintiff has provided addresses and copies of his amended complaint for service on the newly named defendants. Under separate order, this Court has directed the Court Clerk to serve the newly named defendants. Plaintiff's motion to accept complaint and for service (ECF No. 72) is, therefore, moot and shall be denied.

Plaintiff also moves to dismiss Defendants Bednaczyk, Brohis, and Brueschel because they have not been served and service addresses cannot be found for these individuals. ECF No. 69. These individuals are not named in Plaintiff's Amended Complaint and therefore, the motion to dismiss is moot and shall be denied.

### B. Motion for Telephonic Conference (ECF Nos. 64 and 66)

Plaintiff bases these motions, in part, on counsel's failure to allow him to make 45 copies of his 28 page proposed amended complaint. At the time that he requested permission to make these copies, Plaintiff had not yet been granted leave to amend his complaint. Moreover, he has since submitted sufficient copies of his proposed amended complaint for service on the newly named defendants.

1 Plaintiff also complains, without specificity, that counsel for Defendants has opposed “all  
2 discovery,” failed to agree to a telephone conference, has allowed the Defendants “to perjure  
3 themselves,” was nasty to him on the phone, and is interfering with his right to access the court.  
4 ECF No. 64. According to counsel for Defendants, the parties agreed to participate in a  
5 discovery conference on July 24, 2013. ECF No. 68.

6 Plaintiff was previously advised that this Court will not entertain discovery motions that  
7 do not include a certificate that the movant first conferred counsel for Defendants and that such  
8 conference is to take place *before* he files any motion relating to discovery. *See* ECF No. 57.  
9 Only if the parties cannot amicably resolve their differences may Plaintiff file a motion to  
10 compel with this Court. The motion to compel must include a certification stating that good faith  
11 efforts to resolve the discovery dispute were unsuccessful and shall *specifically* identify those  
12 areas of disagreement that remain unresolved.

13 In addition, Plaintiff shall refrain from making vague and unsupported allegations and  
14 shall desist from casting unsupported aspersions against counsel for Defendants. There is  
15 nothing in the record to support claims that counsel for Defendant is suborning perjury,  
16 interfering with Plaintiff’s access to this Court, or is otherwise acting in bad faith.

17 Accordingly, it is **ORDERED**:

18 (1) Plaintiff’s motion to amend (ECF No. 62) is **GRANTED**. The Clerk is directed  
19 to docket Plaintiff’s proposed amended complaint (ECF No. 62-1) as Plaintiff’s Amended  
20 Complaint. Plaintiff’s motion to accept and serve amended complaint (ECF No. 72) is **DENIED**  
21 **as moot**.

22 (2) Plaintiff’s motion to dismiss Defendants Bednaczy, Brokhis, and Grueschel (ECF  
23 No. 69) is **DENIED as moot**.

1 (3) Plaintiff's motions for telephonic hearing and motion to expedite telephonic  
2 hearing (ECF Nos. 64 and 66) are **DENIED**.

3 (4) The Clerk shall send a copy of this Order to Plaintiff and counsel for Defendants.  
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5 **DATED** this 1<sup>st</sup> day of August, 2013.  
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9 Karen L. Strombom  
10 United States Magistrate Judge  
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